



The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

L. JOYCE HANPERS
COMMISSIONER

November 17, 1981

You inquire whether the Massachusetts room occupancy excise applied to the rental of rooms at ("Hotel") by ("Airline") from mid-1977 to mid-1981. The rooms were rented under four occupancy contracts that ran consecutively, each for about one year. The Airline paid the room occupancy excise on its rentals under the contracts.

The first contract provided:

"1. [The Airline] agrees to domicile all its Boston overnight flight crew members in [the Hotel] during their stay.

.....

3. It is understood that [the Hotel] will provide the rooms as follows: Mondays, Tuesdays, Thursdays and Saturdays: 27 rooms each day. Wednesdays, Fridays and Sundays: 40 rooms each day.

.....

5. ...The permanently occupied rooms will be charged at a monthly rate based on the [specified] daily charges.

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.....

9. It is also agreed that /the Hotel/, on available basis only, will provide the /Airline's/ crew the necessary rooms in emergency cases, in addition to the pre-arranged schedule."

The second contract was substantially identical to the first except that the rental charge per room was increased and the Hotel agreed to provide 27 rooms on Mondays, Tuesdays and Fridays and 40 rooms on Wednesdays, Thursdays, Saturdays and Sundays.

The third and fourth contracts required the Airline to submit periodically to the Hotel a schedule specifying its room requirements for each succeeding 30-day period; they provided:

"3. During the term of this agreement /the Hotel/ shall provide /the Airline/ with its room requirements for its crews...in accordance with the schedules submitted by /the Airline/ to /the Hotel/ ...; provided, however, that /the Hotel/ shall not be required to provide more than /X/ rooms per day to /the Airline/ for its crews. In the event /the Airline's/ daily room requirements at /the Hotel/ for its crews exceed /X/ rooms, /the Hotel/ shall use its best efforts to supply such excess rooms to /the Airline/ on a space available basis.

.....

5. In addition to providing rooms to /the Airline/ pursuant to paragraph 3 of this agreement, /the Hotel/ shall use its best efforts to provide accommodations for layover passengers of /the Airline/ in single or double rooms. /The Hotel/ shall also use its best efforts to re-rent any rooms which have been allotted to /the Airline/ for its crews but which /the Airline/ advises /the Hotel/ that it will not use. There shall be no charge to /the Airline/ for such rooms as are rented by /the Hotel/."

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The third and fourth contracts contained a clause providing that if the total rental paid during the term of each agreement was less than a sum representing 365 times the daily rental per room times a specified number of rooms, the Airline would pay the Hotel that sum less the aggregate of (a) the total rental paid by the Airline under the agreement; plus (b) the total rental received by the Hotel for rooms allotted to the Airline but re-rented by the Hotel; plus (c) the total rental at a specified rate for rooms not required by the Airline because of unforeseen circumstances beyond its control; plus (d) the amount in excess of \$10,000 paid for rentals by or on behalf of the Airline's layover passengers during the term of each contract.

All four contracts excused either party from its obligations if its performance were prevented due to unforeseeable circumstances beyond its control.

Massachusetts General Laws Chapter 64G, Section 3 imposes an excise upon the transfer of occupancy of any room or rooms in a hotel, lodging house or motel in Massachusetts. "Occupancy" is defined in Section 1(e) of Chapter 64G as:

"the use or possession, or the right to the use or possession, of any room or rooms in a hotel, lodging house or motel...for a period of ninety consecutive calendar days or less..."

"Occupant" means "a person who, for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel, lodging house or motel..." (G.L. c. 64G, s. 1(f)), and "person" is defined in Chapter 64G, Section 1(g) as including individuals, corporations, partnerships, and other specified legal entities.

Technical Information Release 79-5 ("Room Occupancy Excise: Rentals For More Than Ninety Consecutive Days"), issued July 9, 1979, provides that a break in the continuing nature of an occupancy begins anew the ninety-day period during which an occupancy is taxable. It further states that any room reservation arrangement between a person and an operator under which the person does not become liable for the rent for use or possession of a room in a hotel,

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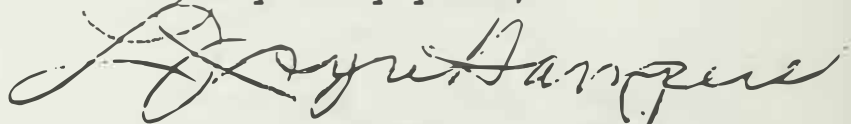
motel or lodging house does not constitute an occupancy.

Based on the foregoing, it is ruled that the room occupancy excise applied to the first ninety days of continuous occupancy of rooms at the Hotel by the Airline.

The number of rooms for which the excise was due for any given day of occupancy by the Airline is the number of rooms rented that day by the Airline minus the lowest number of rooms rented by the Airline on any of the ninety days preceding that day. A room is considered rented by the Airline only if the Airline was liable for the full rental charge for the room under the controlling rental agreement.

If the Hotel reported to the Commissioner a greater tax than was due, the Hotel may apply for an abatement of the tax by filing an application for abatement (Form CA-6), together with supporting information, within the limitations period set forth in General Laws Chapter 62C, Section 37.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Royut Hargens".

Commissioner of Revenue

LJH:JXD:mf

LR 81-108